07/26/2017
10:18:33

Cabell County Circuit Clerk's Office
Docket Entries for case CK-6-2017-C-362
Style: Melvin J Miller Jr
v.
Westfield Insurance Company
Judge: Judge Gregory L. Howard Jr.

Seq	Date	Description
1	06/23/2017	Other: CIS, Complaint, Issued 20 Day Sumns Rtd To Atty For Srvc By SOS
2	07/11/2017	Other: ROS By SOS OBO Westfield Insurance Company One Park Circle 7/5/17

FILED

CIVIL CASE INFORMATION STATEMENT [illegible] 23 AM 10: 11
IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

[illegible] WOOD
[illegible] CLERK

MELVIN J. MILLER, JR.,

Plaintiff,

v.

CIVIL ACTION NO: 17-C-362
JUDGE

WESTFIELD INSURANCE COMPANY,

/s/ GREGORY L. HOWARD, JR.

Defendant.

DAYS TO ANSWER
30

TYPE OF SERVICE
SECRETARY OF STATE

Original and 4 copies of Complaint furnished herewith.

( ) Asbestos	( ) Adoption	( ) Appeal from Magistrate Ct
( ) Professional Malpractice	( ) Contract	( ) Petition for Modification of Magistrate Sentence
(x) Personal Injury	( ) Real Property	( ) Miscellaneous Civil
( ) Product Liability	( ) Mental Health	( ) Other
( ) Other Tort	( ) Appeal of Administrative Agency	

JURY DEMAND: (X) YES ( ) NO

CASE WILL BE READY FOR TRIAL BY: 7/18

****

DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE. (X) UNKNOWN

****

COUNSEL FOR PLAINTIFF

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FILED

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

2017 JUN 23 AM 10: 12

MELVIN J. MILLER, JR.,

Plaintiff,

CLERK

v.

CIVIL ACTION NO: 17-C- 362
JUDGE

WESTFIELD INSURANCE COMPANY,

/s/ GREGORY L. HOWARD, JR

Defendant.

COMPLAINT

NOW COMES your Plaintiff, Melvin J. Miller, Jr., by counsel, Amy C. Crossan and Bouchillon, Crossan & Colburn, L.C., and complains and alleges unto Your Honor as follows:

1. The Plaintiff, Melvin J. Miller, Jr., is a resident of Cabell County, West Virginia;

2. The Defendant, Westfield Insurance Company, is a foreign corporation, licensed to transact and engaged in the business of insurance in West Virginia, including in Cabell County, West Virginia;

3. At all times, Defendant was engaged in the business of insurance in West Virginia, as defined in the West Virginia Unfair Trade Practices Act §33-11-2 *et. seq.* of the West Virginia Code;

4. The Defendant is the underinsured insurance motorist carrier of the Plaintiff;

5. On the day of 8th day of May, 2015, at approximately 3 p.m., the Plaintiff was operating his vehicle in a school zone in Chesapeake, Ohio. He was stopped in traffic;

6. At said time and place, a vehicle owned by Robert Gillem was being operated by a permissive user on the same street in the same direction as the Plaintiff;

7. The Gillem vehicle hit the rear of the vehicle that the Plaintiff was operating, and proximately caused the Plaintiff to hit the rear end of a vehicle that was stopped in front of him;

8. The collision was solely caused by the recklessness, carelessness and negligence of the Gillem vehicle, for that among other acts and omissions, the operator:

A. Operated the motor vehicle at a high, dangerous and excessive rate of speed under the circumstances then and there existing;

B. Failed to keep a proper lookout for other vehicles lawfully upon the highway;

C. Failed to apply his brakes in time to avoid striking the Plaintiff's vehicle;

D. Failed to maintain proper and adequate control of the motor vehicle;

E. Failed to reduce speed to avoid a collision;

F. Failed to observe due care and precaution;

G. Failed to exercise reasonable care in the operation of the motor vehicle under the circumstances then and there existing;

H. Violated the statutes governing the operation of a motor vehicle; and

I. Was otherwise negligent in other respects not now known to the Plaintiff but which may become known prior to or at the time of trial.

9. As a direct and proximate result of the negligence of the Gillem vehicle operator, the Plaintiff suffered injuries and incurred special damages;

10. The Plaintiff settled his claim against the Gillem liability policy of insurance for the policy limits;

11. The Plaintiff asserted a claim against the Defendant for underinsured motorist benefits under his policy of insurance with the Defendant;

12. Jurisdiction and venue are appropriate in this county as it is the county where the Plaintiff resides and in which the Defendant engages in business;

Count I – Breach Of Contract - Underinsured Motorist Benefits

13. The Plaintiff hereby restates and re-alleges each and every allegation set forth in paragraphs 1-12, as if set forth herein;

14. At all times relevant hereto, the operator of the Gillem vehicle was an underinsured motorist as that term is defined by applicable law;

15. At the time of the subject accident, the Plaintiff was insured under an automobile policy issued by Defendant, with underinsured motorist coverage;

16. All premiums were paid as due and Plaintiff complied with all of the terms and conditions of the Westfield policy;

17. The Gillem vehicle operator was negligent and reckless and the sole proximate cause of the May 8, 2015 accident, and as a result of said conduct, the Plaintiff is entitled to recover damages;

18. Defendant Westfield was notified of the subject accident and has had the opportunity to investigate the claim of the Plaintiff for underinsured motorist benefits;

19. Defendant Westfield's policy provides that it is required to pay the Plaintiff all sums that he is legally entitled to recover from a negligent operator of a vehicle that is underinsured, and Defendant is therefore responsible for payment to the Plaintiff of the

underinsured motorist coverage benefits afforded to him by his policy of insurance with the Defendant;

20. The Defendant has refused to pay the Plaintiff the reasonable value of his claim for personal injuries under his policy of insurance;

21. The Defendant has breached its duties and obligations to the Plaintiff under the insurance policy by its failure to offer to Plaintiff a fair and reasonable settlement of his underinsured motorist claim;

22. The Defendant's refusal to complete the settlement of the Plaintiff's claim has continued, despite the fact that Westfield's liability to the Plaintiff is and has been reasonably clear;

23. As a direct and proximate result of Defendant's breach of its duties under the policy, the Plaintiff has been deprived of his underinsured motorist benefits due and owing under the policy;

24. The Plaintiff is entitled to recover from the Defendant his damages caused by the breach of contract, including his attorney fees and expenses and annoyance and inconvenience damages.

Count II – Common Law "Bad Faith"

25. The Plaintiff hereby restates and re-alleges each and every allegation set forth in paragraphs 1-24, as if set forth herein;

26. Through its actions described herein, and its refusal to pay the Plaintiff's claims, Defendant has breached the common law duty of good faith and fair dealing to the Plaintiff, such that it amounts to "common law bad faith" as recognized in *Hayseeds v. State Farm and Cas. Co.*, 177 W.Va. 323, 352 S.E.2d 73 (1986);

27. Through its actions herein and its refusal to pay the Plaintiff's underinsured motorist claim, the Defendant compelled the Plaintiff to institute litigation in order to recover his amounts due under his policy;

28. As a direct and proximate result of Defendant's bad faith, and its breach of the common law duty of good faith and fair dealing, the Plaintiff is entitled to recover from Defendant the economic and non-economic damages permitted under *Hayseeds* when an insured "substantially prevails", including attorney fees and costs, net economic losses, interest, and damages for annoyance and inconvenience;

29. From its initial notification of the Plaintiff's claim for underinsured motorists benefits, Defendant has acted maliciously and willfully, predetermined to delay and/or deny the fair payment of the Plaintiff's claim;

30. Defendant's deliberate and malicious conduct warrants the imposition of punitive damages;

Count III – Unfair Trade Practices

31. The Plaintiff hereby restates and re-alleges each and every allegation set forth in paragraphs 1-30, as if set forth herein;

32. The Defendant received a timely notice of the Plaintiff's claim for underinsured motorist benefits, and has had adequate time to investigate any coverage or liability issues, and Defendant was not in any way prejudiced by the timeliness or any alleged lack of timeliness of such notification;

33. At all times relevant herein, Defendant refused to acknowledge and act reasonably and promptly upon communications with respect to the underinsured motorist claim of the Plaintiff, which is a direct violation of W.Va. Code 33-11-4(9)(b);

34. At all times relevant herein, Defendant failed to adopt and/or implement reasonable standards for the prompt investigation of the Plaintiff's underinsured motorist benefits claim arising under the subject policy, which is a direct violation of W.Va. Code 33-11-4(9)(c);

35. At all times relevant herein, Defendant delayed the payment of the Plaintiff's underinsured motorist claim and failed to conduct a prompt and reasonable investigation based upon all available information, which is a direct violation of W.Va. Code 33-11-4(9)(d);

36. At all times relevant herein, Defendant did not attempt in good faith to effectuate a prompt, fair and equitable settlement of the underinsured motorist claim of the Plaintiff despite the fact that liability was reasonably clear, which is a direct violation of W.Va. Code 33-11-4(9)(f);

37. Defendant compelled the Plaintiff to institute litigation in order to recover the benefits due under the underinsured motorist claim of the Plaintiff, which is a direct violation of W.Va. Code 33-11-4(9)(g);

38. Defendant failed to offer the Plaintiff an amount that was fair and reasonable despite the fact that no dispute exists as to coverage or liability, and this constitutes a direct violation of the Code of State regulations, 114-14-6.4;

39. The conduct of Defendant is part of a general business practice and constitutes unfair claim settlement practices under West Virginia law, and specifically under W.Va. Code 33-11-4(9);

40. As a direct and proximate result of the Defendant's unfair claims settlement practices, the Plaintiff has been deprived of the underinsured motorist benefits due under his policy;

41. From the notification of the Plaintiff's claim, Defendant has acted maliciously, willfully, predetermined to delay and/or refuse payment of a fair and reasonable settlement of the Plaintiff's claim, in violation of W.Va. Code 33-11-4(9);

42. The Plaintiff is entitled to recover his damages for the Defendant's unfair trade practices;

43. Defendant's deliberate and malicious conduct warrants the imposition of punitive damages;

44. All of the Plaintiff's losses were, are and will be due solely to and by reason of the carelessness, negligence and recklessness of the Defendant and of the operator of the Gillem vehicle, without any negligence or want of due care on the Plaintiff's part contributing thereto.

WHEREFORE, the Plaintiff, Melvin J. Miller, Jr., prays judgment against the Defendant for compensatory and punitive damages in an amount that exceeds the jurisdiction of this Court, and as will fully compensate him for his injuries, in an amount to be determined by the jury, plus prejudgment interest, post judgment interest, attorney's fees and costs. **PLAINTIFF DEMANDS A TRIAL OF THE ISSUES BY JURY.**

MELVIN J. MILLER, JR.
BY COUNSEL

AMY C. CROSSAN (SB #7150)
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FILED

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

2017 JUN 23 AM 10: 09

COPY

MELVIN J. MILLER, JR.,

Plaintiff,

v.

CIVIL ACTION NO: 17-C-262
JUDGE

/s/ GREGORY L. HOWARD, JR

WESTFIELD INSURANCE COMPANY,

Defendant.

SUMMONS

TO THE ABOVE NAMED DEFENDANT:

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby Summonsed and required to serve upon AMY C. CROSSAN, Plaintiff's attorney, whose address is 731 Fifth Avenue, Huntington, West Virginia 25701, an Answer, including any related counterclaim you may have to the Complaint filed against you in the above styled civil action, a true copy of which is hereby delivered to you. You are required to serve your answer within thirty (30) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above styled civil action.

DATED: JUN 23 2017

JEFF HOOD, CIRCUIT CLERK

BY ______________________
Deputy

CIRCUIT COURT OF CABELL COUNTY W.VA. FAMILY COURT OF CABELL COUNTY

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305

FILED

2017 JUL 11 AM 10: 57

Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
Visit us online:
www.wvsos.com

Jeffrey E. Hood
Cabell County Courthouse
P. O. Box 545
Huntington, WV 25710-0545

Control Number: 198337

Defendant: WESTFIELD INSURANCE COMPANY
ONE PARK CIRCLE
WESTFIELD CENTER, OH 44251 US

Agent: JOHN BATCHELDER

County: Cabell

Civil Action: 17-C-362

Certified Number: 92148901125134100002112476

Service Date: 7/5/2017

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your unauthorized foreign corporation.

Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your unauthorized foreign corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, ***not to the Secretary of State's office.***

Sincerely,

Mac Warner

Mac Warner
Secretary of State

FILED
2017 JUN 23 AM 10: 10
COPY

CIVIL CASE INFORMATION STATEMENT
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MELVIN J. MILLER, JR.,

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v.

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/s/ GREGORY L. HOWARD, JR.

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[signature]